

EXEMPTION 7



Exemption 7's Threshold

- Protects records or information compiled for law enforcement purposes, including criminal, civil, administrative and regulatory proceedings;
- The records must have been “compiled for law enforcement purposes.”
 - Does not mean originally created for law enforcement purposes—recompilation concept

Exemption 7

- 6 subparts allow for the withholding of information compiled for law enforcement purposes on the basis of the potential harm resulting from release
- Must be able to identify what law is sought to be enforced or the purpose of the compilation of records
- (b)(7)(A): could interfere with pending or prospective enforcement proceedings:

Exemption 7 Subparts

- (b)(7)(B): would deprive an individual of the right to a fair trial
- (b)(7)(C): could reasonably be expected to constitute an unwarranted invasion of personal privacy
- (b)(7)(D): could reasonably be expected to disclose identity of confidential source . . . or information provided by source

Exemption 7 Subparts

- (b)(7)(E): would reveal techniques or procedures for law enforcement investigations or guidelines if could risk circumvention of law
- (b)(7)(F): could reasonably be expected to endanger life or physical safety of any individual

(b)(7)(A)



- Protects information concerning pending or prospective law enforcement proceedings, the disclosure of which “could reasonably be expected” to interfere with that proceeding.
- “Proceeding” includes law enforcement investigations, prosecutions, and administrative and regulatory proceedings (of a law enforcement nature)

(b)(7)(A)

- Applies to federal law enforcement proceedings, and state and foreign law enforcement proceedings
- This subpart is temporal in nature--an investigation/case must be open, pending or prospective
- May be used when a suspect is at large, a crime remains unsolved, or there is a concrete chance of future proceedings

(b)(7)(A)

- The temporal nature of this subpart does NOT mean that when the reason for the exemption no longer exists, all of the information must be disclosed; other exemptions may apply to withhold exempt information
- Must articulate harm in release
- Public source documents should be released

(b)(7)(B)

- Protects information the disclosure of which would deprive an individual of the right to a fair trial or impartial adjudication.
- Flip-side of (b)(7)(A); protects the litigant's interests, rather than the government's interests, from publicity
- Rarely, if ever, used



(b)(7)(C)

- Protects records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy
- Covered in a session workshop



(b)(7)(D)



- Protects the identities of confidential sources AND in the case of a criminal investigation conducted by a criminal law enforcement authority OR a lawful national security intelligence investigation, all information provided by those sources.
- Applies in criminal and civil matters
- Criminal law enforcement agencies vs. “mixed function” agencies

(b)(7)(D)

- Who is a source?
 - A person, state, local or foreign agency or authority, or any private institution, which furnished information on a confidential basis
 - No presumption of confidentiality with regard to sources
 - What is confidential?
 - The government received information with the understanding that it would not be disclosed except to the extent necessary for law enforcement

(b)(7)(D)

- The exemption applies even if:
 - The identity is known;
 - The source is anonymous;
 - The source is dead;
 - The source has testified;
 - The source may be called to testify

(b)(7)(E)

- Protects information if disclosure **WOULD** reveal techniques or procedures for law enforcement investigations or prosecutions or guidelines for such, if disclosure of the guidelines could reasonably be expected to risk circumvention of the law.
- Two parts:
 - Techniques and procedures: no risk of circumvention required
 - Guidelines/manuals



(b)(7)(E)

- Does not apply to routine or well-known techniques, but may be able to protect the details of the technique
- Can use Exemption 2 (high) with (b)(7)(E)
- Law enforcement guidelines/manuals: remember to segregate non-exempt information

(b)(7)(F)

- Protects law enforcement-related information if disclosure could reasonably be expected to endanger the life or physical safety of ANY individual;
- Must be some connection between the release of the information and the harm

